

The second preliminary hearing was held on May 5, 1999, that resulted in the June 8, 1999, Order Denying Compensation, and is the subject of this appeal. Again, the Administrative Law Judge found claimant failed to prove that his herniated cervical disc was related to the June 19, 1998, work-related accident.

Claimant contends that the testimony of his treating physician, K. N. Arjunan, M.D., proves his cervical disc herniation and need for surgery is related to his June 19, 1998, fall. Claimant requests the Appeals Board to reverse the Administrative Law Judge's preliminary hearing order and order the respondent to provide claimant with temporary total disability benefits, pay all past medical treatment expenses, and provide further medical treatment through Dr. K. N. Arjunan.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs and the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board finds it is not necessary to repeat the findings of fact and conclusions of law contained in its previous order entered in this case on April 26, 1999. Therefore, the Appeals Board adopts those findings and conclusions as if specifically set forth herein.

After the January 13, 1999, preliminary hearing, on February 8, 1999, claimant returned to see his treating physician, Dr. Arjunan. For the first time, claimant described to Dr. Arjunan that on June 19, 1998, he fell from a roof while working for the respondent. With that history, Dr. Arjunan was asked during his May 12, 1999, deposition testimony whether the June 19, 1998 fall was the most likely cause of claimant's neck injury. The doctor opined that the June 1998 fall could have been a significant type of injury that might have resulted in a bulging disc. But the doctor did not believe claimant suffered a ruptured disc as a result of the fall. He went on to opine that from the history claimant related to him the ruptured disc probably occurred sometime in September of 1998, instead of June of 1998. Dr. Arjunan reasoned, since claimant's symptoms worsened in September of 1998, that was probably when the disc ruptured.

Respondent's attorney wrote Dr. Arjunan a letter dated March 17, 1999, that was admitted into evidence at Dr. Arjunan's deposition. In the letter, Dr. Arjunan was informed that claimant did not seek medical treatment for his right arm and right shoulder symptoms until October 12, 1998. Further, claimant performed his regular job duties as a plumber for the respondent from June 19, 1998, the date he fell, until August 27, 1998, when he quit his plumbing job with the respondent for reasons not associated with his neck injury.

Claimant then started working for another plumbing company the next day on August 28, 1998. He continued to work for that plumbing company until he sought medical treatment because of his worsening symptoms at Minor Med clinic on October 12, 1998. The medical records of Minor Med clinic and the records of the Physical Therapy Center, where the Minor Med clinic referred claimant for physical therapy, both indicated claimant had an onset of neck and right arm pain on or about October 6, 1998.

In a letter to respondent's attorney dated May 4, 1999, Dr. Arjunan concluded that in light of those facts, he could not say with any reasonable degree of medical probability that claimant's disc herniation was the result of the June 1998 fall.

At Dr. Arjunan's deposition, respondent's attorney asked Dr. Arjunan whether his opinion that he could not, with any reasonable degree of medical probability, relate claimant's disc herniation to the June 1998 fall had changed. Dr. Arjunan indicated it had not.

The Appeals Board finds the Administrative Law Judge's denial of an award for preliminary benefits should be affirmed. The Appeals Board interprets Dr. Arjunan's testimony to conclude that claimant could have sustained a bulging disc as a result of the June 1998 fall, but the disc ruptured sometime in late September 1998 or earlier October 1998, when his symptoms worsened to the point he had to seek medical treatment. At that time, claimant had terminated his employment on August 27, 1998, with the respondent and was working for another plumbing company. Claimant has failed to prove that the September or October aggravation was the direct and probable consequence of the June 1998 accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the June 8, 1999, preliminary hearing Order Denying Compensation entered by Administrative Law Judge Bryce D. Benedict should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1999.

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BOARD MEMBER

c: Paul D. Post, Topeka, KS  
Bret C. Owen, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director